



Maryland Health Benefit Exchange  
Financial Sustainability Advisory Committee

Fraud, Waste & Abuse

November 2, 2011

# Agenda

- Introduction
- Federal Laws on Health Care Fraud
- Types of fraudulent activities
- System of Internal Control Framework
- Exchange Planning Process
- Reference materials

# Introduction

- What is Fraud?
  - *A false representation about a material fact*
- What is Waste?
  - *Extravagant or careless expenditure of government or exchange funds that results from deficient practices, systems, or controls*
- What is Abuse?
  - *Intentional or improper use of government or exchange funds or resources*

# Introduction (con't)

- In order to prevent and detect fraud, waste and abuse, Maryland's exchange will need to develop a strong system of internal controls
- As a start-up organization exhibiting characteristics of both a public agency and a private company, it should look to both government and the private sector for best practices in this area
- Need to ensure in its business operations planning that resources are identified and allocated for this often overlooked financial and operational process

# Introduction (con't)

- Due to its unique function in the market, exchange needs to build credibility and trust with the public and its business partners
- Quickest way to lose credibility and trust is to fail to develop a strong system of internal control resulting in errors and tarnishing the image of the exchange
- Exchange is required to be audited by HHS, but will most likely also be subject to state-level audits, operational reviews, and state-level Inspector General and Attorney General inquiries

# Federal Laws on Health Care Fraud

- Federal False Claims Act (FCA) – 31 U.S.C. Title 1347
  - *Is the primary federal law used to fight fraud in Medicaid and Medicare*
- Whistleblower (Qui Tam) Protections – United States Code (USC) 3730 (h)
  - *Protects employees who assist the federal government in investigation and prosecution of violations of the false claims act*
- Physician Self-referral prohibition statute (more commonly known as “Stark Law”) – 1877 of the social security act (42 USC 1395)

# Federal Laws on Health Care Fraud

## (con't)

- *Prohibits physicians from referring Medicare patients to an entity in which physician (or family) has a financial relationship*
- Anti-Kickback Statute – Section 1128 of the Social Security Act (42 USC 1320a-7b(b))
  - *Prohibits health care professional entities and vendors from offering, paying, soliciting or receiving incentives to induce the referral of business under a federal program*

# Federal Laws on Health Care Fraud

## (con't)

- Anti-Trust Laws
  - *Prohibits monopolistic conduct and agreements that restrain trade*
- Health Insurance Portability & Accountability Act of 1996 (HIPPA)
  - *Establishes standards and requirements for the electronic transmission of certain health information. Protection of private information may decrease fraudulent activities*



# Federal Laws on Health Care Fraud

(con't)

- Exchange (employees and partners) will be primarily concerned with the Federal False Claims Act, Whistleblower protections, Anti-Kickback Statute, HIPAA

# Types of Fraudulent Activities (examples)

- Enrollees

- *Misrepresenting income, dependents, or other eligibility requirements*
- *Employees not meeting eligibility requirements*
- *Employers not an existent group for tax-credit purposes*

- Carriers

- *Failure to provide medically necessary services*
- *Inappropriate enrollment/disenrollment*
- *Improper bid submission*

# Types of Fraudulent Activities (con't) – (examples)

- Providers
  - *Billing for services not provided*
  - *Waiving co-pays in certain instances*
  - *Receiving remuneration for writing certain Rx drugs or products*
- Agents
  - *Falsifying employer data on application*
  - *Enrolling group of individuals to form a non-existent company*
  - *Adding false dependents to an employer group census*

# System of Internal Control Framework

- There are many definitions of internal control as it affects various levels of an organization differently
- In developing exchange infrastructure, recommend looking to private market for guidance
- Most commonly used framework in the United States is the Committee of Sponsoring Organizations of the Treadway Commission or commonly referred to as COSO

# System of Internal Control Framework (con't)

- COSO defines internal control as having 5 components:
  1. Control Environment
  2. Risk Assessment
  3. Control Activities
  4. Information & Communication Systems
  5. Monitoring Process

# System of Internal Control Framework (con't)

## 1. Control Environment

- This describes an entity's culture or "tone-at-the-top"
- Management must establish the overall attitude, awareness and actions of the importance of internal control and detecting F,W&A
- Management must place emphasis on control in policies, procedures, methods, and organizational structure

# System of Internal Control Framework (con't)

## 2. Risk Assessment

- Involves the identification and analysis of relevant risks (both internal and external)
- Begin by subdividing exchange into “control cycles”
- Must be done on an ongoing basis, as current policies and procedures may be inadequate to meet evolving challenges (especially true during exchange start-up)
- Will be customized to meet the unique structure and business of an organization

# System of Internal Control Framework (con't)

## 3. Control Activities

- Design, implementation and maintenance of internal control related policies and procedures
- Segregation of incompatible duties
- Budgeting and reporting process
- Disaster recovery plan



# System of Internal Control Framework (con't)

## 4. Information & Communication Systems

- Processes that support the identification, capture, and transfer of information in a form and time-frame that enables Management and other appropriate personnel to carry out their responsibilities
- Clear lines of communication throughout the organization and with outside parties

# System of Internal Control Framework (con't)

## 5. Monitoring Process

- Management must continuously monitor system of internal control
- Commissioning independent audits (financial & operational)
- Continuously update policies and procedures based on management or audit findings
- Continuous self-assessment and improvement

# Exchange Planning Process

- Steps required of the Exchange:
  - Use the COSO definition as a framework for internal control development
  - Identify “control cycles”
  - Perform a risk assessment in order to prioritize control cycles
  - Document the transactional process in each functional area
  - Identify potential risk

# Exchange Planning Process (con't)

- Identify compensating controls
- Evaluate design of compensating controls
- Test compensating controls

# Exchange Planning Process (con't)

- Step 1:
  - COSO components
    1. Control Environment
    2. Risk Assessment
    3. Control Activities
    4. Information & Communication Systems
    5. Monitoring Process

# Exchange Planning Process (con't)

- Step 2:
  - Exchange Control Cycles (examples):
    - Entity-wide (Mgmt. Governance, P&P's, Compliance)
    - Eligibility Determination
    - Billing & Collections
    - Procurement of Services & Assets
    - Payroll
    - Reporting & Disclosure
    - Appeals Process
    - IT (P&P, Acquisition & Development, Change Mgmt., Computer Operations, Logical Access, Security)

# Exchange Planning Process (con't)

- Step 3:
  - Perform risk assessment to prioritize
    - In early exchange start up, focus will be on:
      - entity-wide processes,
      - eligibility determination,
      - Procurements,
      - legal and regulatory compliance, and
      - financial systems such as payroll, receivables/payables, reporting

# Exchange Planning Process (con't)

- Step 4
  - Document transactional process
    - Will be unique to each control cycle
    - To be effective, this step must clearly identify:
      - Who is performing the function,
      - What is involved in the function, highlighting each step and dependencies, if any
      - Identify documentation resulting from function (ex. Payroll register properly approved with signature prior to initiating payment)



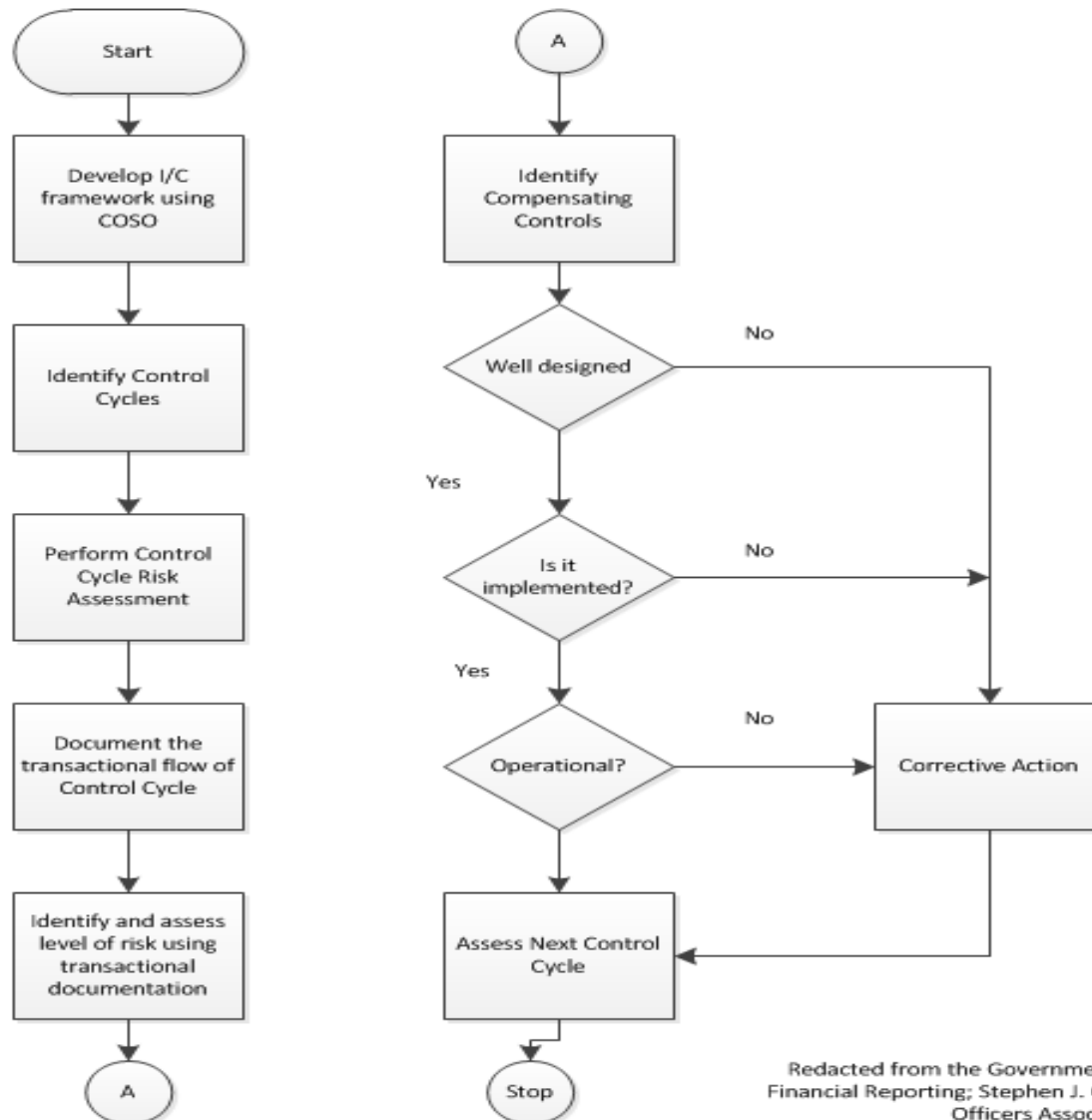
# Exchange Planning Process (con't)

- Step 5:
  - Identify potential risk in process
    - The goal of this step is to identify specific risks resulting from the Control Cycle
    - Example from the Procurement Cycle would be; how will we confirm vendor is approved; if competitive bid, that the process was followed; contracts signed before start of work; properly documented sign-offs, etc.

# Exchange Planning Process (con't)

- Steps 6, 7 and 8:
  - These steps deal with compensatory controls
    - Once Control Cycle risks have been assessed at Step 5, Exchange will need identify controls in place to mitigate the risks, ensure a compensating control is working as intended, and test such control(s)
    - Generally, steps 6-8 will be performed after the Exchange has been operational for a period of time.

# Exchange Planning Process (con't)





WAKELY  
CONSULTING GROUP

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## Contact Information

[www.wakely.com](http://www.wakely.com)

Patrick Holland  
[patrickh@wakely.com](mailto:patrickh@wakely.com)  
617 939 2002

James Woolman  
[jamesw@wakely.com](mailto:jamesw@wakely.com)  
617 460 1093